GARFIELD, SECRETARY OF THE INTERIOR, *v.* UNITED STATES *ex rel.* GOLDSBY.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 248. Argued October 15, 18, 1908.—Decided November 30, 1908.

While acts of public officials which require the exercise of discretion may not be subject to review in the courts, if such acts are purely ministerial or are undertaken without authority the courts have jurisdiction, and mandamus is the proper remedy.

There is no place in our constitutional system for the exercise of arbitrary power, and the courts have power to restore the status of parties aggrieved by the unwarranted action of a public official.

One who has acquired rights by an administrative or judicial proceeding cannot be deprived of them without notice and opportunity to be heard; such deprivation would be without due process of law.

After the Secretary of the Interior has approved a list containing the name of a person found by the Dawes Commission to be entitled to enrollment for distribution he cannot, without giving that person

decision. The Secretary of the Interior, on April 26, 1906, reported his approval to the Dawes Commission, the roll as approved was kept in the Secretary's office, and copies sent out as the statute required.

Goldsby selected his land and received a certificate of allotment from the commission, but no patent has been issued for the same. On March 4, 1907, the Secretary of the Interior without notice to the relator and without his knowledge, erased his name from the rolls and opposite the same caused the entry to be made, "canceled March 4, 1907."

In the view which we take of this case it is unnecessary to recite at length the numerous acts of Congress which have been passed in aid of the purpose of Congress to extinguish the tribal titles to Indian lands and to allot the same among the members thereof with a view of creating a State or States which should embrace these lands.

The act of June 10, 1896, c. 398, 29 Stat. 339, empowered the Dawes Commission to hear and determine applications for citizenship, and gave an appeal to the United States court in the Indian Territory from the decisions of the commission; made the judgment of that court final, and required the commission to complete its roll of citizens of the several tribes, and to include therein the names of citizens, in accordance with the requirements of the act. And the commission was required to file the list of members as they finally approved them, with the Commissioner of Indian Affairs.

The act of June 28, 1898, c. 517, 30 Stat. 497, § 11, made provision that when the roll of citizenship of any one of the nations or tribes is complete, as provided by law, and a survey of the land is made, the Dawes Commission should proceed to allot the lands among the citizens thereof, as shown by the roll.

By the act of March 3, 1901, c. 832, 31 Stat. 1077, it was provided that the rolls made by the Commission to the Five Civilized Tribes, as approved by the Secretary of the Interior, should be final, and authorized the Secretary of the Interior to fix the time by agreement with the tribes for the closing

of the roll, and upon failure of such agreement then the Secretary of the Interior should fix the time for the closing of the rolls, and after which no name should be added thereto.

The act of July 1, 1902, c. 1362, 32 Stat. 641, ratifies an agreement with the Choctaw and Chickasaw Nations, providing for the allotment of lands, and provides in § 23:

"23. Allotment certificates issued by the Commission to the Five Civilized Tribes shall be conclusive evidence of the right of any allottee to the tract of land described therein; and the United States Indian agent at the Union Agency shall, upon the application of the allottee, place him in possession of his allotment, and shall remove therefrom all persons objectionable to such allottee, and the acts of the Indian agent hereunder shall not be controlled by the writ or process of any court."

Section 31 of the act made provision for the establishment of a citizenship court. The provisions of the act, in this respect, are fully reviewed in former decisions of this court. *Wallace* v. *Adams*, 204 U. S. 415.

It is sufficient to say that by the act of July 1, 1902, a suit was authorized in the citizenship court to annul the citizenship decrees made in the United States court in the Indian Territory, under the act of June 10, 1896; provision was made for general suits in which a nation might be represented by ten representative defendants, and it was provided that when citizenship judgments in the court of the Indian Territory were annulled in the authorized test suit, the party aggrieved, by being deprived of favorable judgment upon his claim of citizenship, might himself appeal to the citizenship court, and such proceeding should be had as ought to have been had in the court to which the same was taken from the commission as if no judgment or decision had been rendered therein. And it was further provided that no person whose name did not appear upon the rolls, as provided for in this act, should be entitled to participate in the common property of the Choctaw and Chickasaw tribes.

The act of April 26, 1906, c. 1876, 34 Stat. 137, provided that the rolls of the tribes should be fully complete on or before the fourth day of March, 1907, and after that day the Secretary of the Interior should have no jurisdiction to approve the enrollment of any person.

It is insisted by the learned counsel for the Government that the court had no jurisdiction to entertain this suit, because the legal title has not as yet passed from the Government, as no patent has passed. We have no disposition to question those cases in which this court has held that the courts may not interfere with the Land Department in the administration of the public lands while the same are subject to disposition under acts of Congress entrusting such matters to that branch of the Government. Some of these cases are cited in the late case of *United States* v. *Detroit Lumber Company*, 200 U. S. 321, and the principle to be gathered from them is, that while the land is under the control of the Land Department prior to the issue of patent, the court will not interfere with such departmental administration. This was held as late as the case of *Love* v. *Flahive*, 205 U. S. 195, 198.

But the question presented for adjudication here does not involve the control of any matter committed to the Land Department for investigation and determination. The contention of the relator is, that as the Secretary had exercised the authority conferred upon him and placed his name upon the rolls, and the same had been certified to the commission, and he had received an allotment certificate, and was in possession of the lands, the action of the Secretary in striking him from the roll was wholly unwarranted, and not within the authority and control over public land titles given to the Interior Department.

By the conceded action of the Secretary prior to the striking of Goldsby's name from the rolls he had not only become entitled to participate in the distribution of the funds of the nation, but by the express terms of § 23 of the act of July 1, 1902, c. 1362, 32 Stat. 641, it was provided that the certificate

should be conclusive evidence of the right of the allottee to the tract of land described therein. We have therefore under consideration in this case the right to control by judicial action an alleged unauthorized act of the Secretary of the Interior for which he was given no authority under any act of Congress.

It is insisted that mandamus is not the proper remedy in cases such as the one now under consideration. But we are of opinion that mandamus may issue if the Secretary of the Interior has acted wholly without authority of law. Since *Marbury* v. *Madison*, 1 Cranch, 137, it has been held that there is a distinction between those acts which require the exercise of discretion or judgment and those which are purely ministerial, or are undertaken entirely without authority, which may become the subject of review in the courts. The subject was under consideration in *Noble* v. *Union River Logging Railroad*, 147 U. S. 165, 171, and Mr. Justice Brown, delivering the opinion of the court, cites many of the previous cases of this court, and, speaking for the court, says:

"We have no doubt the principle of these decisions applies to a case wherein it is contended that the act of the Head of a Department, under any view that could be taken of the facts that were laid before him, was *ultra vires*, and beyond the scope of his authority. If he has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do. As observed by Mr. Justice Bradley in *Board of Liquidation* v. *McComb*, 92 U. S. 531, 541: 'But it has been well settled that when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction

to prevent it. In such cases the writs of *mandamus* and injunction are somewhat correlative to each other.' "

We think this principle applicable to this case, and that there was jurisdiction to issue the writ of mandamus.

In our view this case resolves itself into a question of the power of the Secretary of the Interior in the premises, as conferred by the acts of Congress. We appreciate fully the purpose of Congress in numerous acts of legislation to confer authority upon the Secretary of the Interior to administer upon the Indian lands, and previous decisions of this court have shown its refusal to sanction a judgment interfering with the Secretary where he acts within the powers conferred by law. But, as has been affirmed by this court in former decisions, there is no place in our constitutional system for the exercise of arbitrary power, and if the Secretary has exceeded the authority conferred upon him by law, then there is power in the courts to restore the status of the parties aggrieved by such unwarranted action.

In the extended discussion which has been had upon the meaning and extent of constitutional protection against action without due process of law, it has always been recognized that one who has acquired rights by an administrative or judicial proceeding cannot be deprived of them without notice and an opportunity to be heard.

The right to be heard before property is taken or rights or privileges withdrawn, which have been previously legally awarded, is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court.

The acts of Congress, as we have seen, have made provision that the commission shall certify from time to time to the Secretary of the Interior the lists upon which the names of persons found by the commission to be entitled to enrollment shall be placed. Upon the approval of the Secretary of the Interior these lists constitute a part and parcel of the final

rolls of citizens of the Choctaw and Chickasaw tribes and Chickasaw freedmen, upon which allotments of lands and distribution of tribal property shall be made.

The statute provides in § 30, act of July 1, 1902, *supra:*

"Lists shall be made up and forwarded when contests of whatever character shall have been determined, and when there shall have been submitted to and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment the rolls shall be deemed complete. The rolls so prepared shall be made in quintuplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Choctaw Nation, one with the governor of the Chickasaw Nation, and one to remain with the Commission to the Five Civilized Tribes."

The Secretary took the action contemplated by this section and acted upon the list forwarded by the commission. The roll was made up and distributed in quintuplicate, as required by the statute. Notice was given to the commission, and land was allotted to the relator, as provided by § 23 of the act of July 1, 1902, *supra*. The relator thereby acquired valuable rights, his name was upon the rolls, the certificate of his allotment of land was awarded to him. There is nothing in the statutes, as we read them, which gave the Secretary power and authority, without notice and hearing, to strike down the rights thus acquired.

Nor do we think it is an answer to the petition for a writ of mandamus to say, as is earnestly contended by the counsel for the Government, that Goldsby's case comes within the provisions of the act of July 2, 1902, establishing a citizenship court, as it appears in this record that he was one of the claimants whose judgment in the court of the Indian Territory was annulled by the subsequent procedure in the citizenship court, leaving to Goldsby the remedy of appealing himself to that court, which, having failed to do, he has lost all right to enrollment, and therefore the decision of the Secretary of March 4,

1907, striking him from the rolls ought not to be interfered with for the reason that the writ of mandamus, upon well-settled principles, ought not to issue to require the Secretary to do that which it now appears he never had any lawful authority to do. But we are of opinion that the facts now adduced are insufficient to require us to say that Goldsby could not establish a right to enrollment. The Government contends, and we have held, that it does not appear in this case whether Goldsby's name was on the original or other tribal rolls, a fact essential to be known in order to determine whether his contention be sound that such an enrollment gave him the right to participate in the division of the funds and lands of the nation irrespective of the action of the Dawes Commission, the court of the Indian Territory, or the citizenship court. The question here involved concerns the right and authority of the Secretary of the Interior to take the action of March 4, 1907, in summarily striking the relator's name from the rolls. That is the question involved in this case.

For the reasons given we think this action was unwarranted, and that the relator is entitled to be restored to the status he occupied before that order was made.

The judgment of the Court of Appeals of the District of Columbia is affirmed.

GARFIELD, SECRETARY OF THE INTERIOR, *v.* UNITED STATES *ex rel.* ALLISON.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

Nos. 249, 250. Argued October 15, 18, 1908.—Decided November 30, 1908.

Decided on the authority of *Garfield* v. *Goldsby*, *ante*, p. 249.

THE facts are practically the same as those stated in the opinion of the preceding case.

The Attorney General and *Mr. Assistant Attorney General Fowler*, with whom *Mr. William R. Harr* was on the brief, for plaintiff in error.

Mr. Charles H. Merillat, with whom *Mr. Charles J. Kappler* and *Mr. James K. Jones* were on the brief, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

These cases were argued and submitted with the *Goldsby Case*, No. 248, just decided. In the case of George A. Allison, a patent had been issued for his lands and duly recorded. In the case of Ida Allison, an allotment certificate had been issued.

The relators are Cherokees, but the legislation herein involved is not different from that governing allotments to members of the Chickasaw Nation.

The Allisons made application to the commission for admission to citizenship under the act of June 10, 1896. Their applications were denied and no appeal taken. Afterwards a decision by the commission, granting the application of the Allisons for enrollment as citizens by blood, was affirmed by the Department of the Interior as of April 16, 1904. Their names were summarily stricken from the rolls by the department's order of March 4, 1907. The cases are controlled by the decision in *Goldsby's Case*.

Judgments affirmed.